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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No.

OSKAR TIEDEMANN and ESTONIAN STATE STEAMSHIP LINE,
Petitioners,

vs.

ESTODURAS STEAMSHIP COMPANY, INC., Claimant of
Steamship "FLORIDA" (formerly the "SIGNE").

**RESPONDENT'S BRIEF IN OPPOSITION TO PETI-
TION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT**

Summary Statement of the Matter Involved

This statement is made for the purpose of correcting and amplifying the statement made by petitioner on page 2 of his petition.

Estonia, formerly under the sovereignty of Sweden, became a province of Czarist Russia following the conclusion of the Thirty Years' War which was ended by the Treaty of Nystad, 1721 (Estonia, pp. 67, 68, by J. Hampden Jackson—1941). While it is true that under the Treaty of Brest-Litovsk, concluded between Russian and Germany in

March, 1918, the Baltic States and part of Poland were wrested by Germany from Russia, it is also true that the people of the Baltic States were not consulted in the formulation of this Treaty. The effectiveness of the Treaty depended upon the success of Germany in World War I and by Germany having lost that war and the renunciation of the Brest-Litovsk Treaty by Russia on November 13, 1918, the Treaty had no effect in the establishment of the independent Republic of Estonia. The Republic was established and separation from Russia accomplished by the Treaty of Tartu, February 2, 1920 (Estonia, p. 284, Malbone W. Graham, University of California Press, 1939). Thereafter a constitution was adopted and a parliamentary government formed which continued to the 17th of June, 1940, when Estonia was invaded by the armies of Soviet Russia, its government overthrown and a Sovietized Communistic government established. This government decreed the nationalization of shipping property on July 28, 1940 (Respondent's Exhibit 5, received Record p. 105, printed 300). On August 6th a petition for admission into the Union of Soviet Socialist Republics was made. This petition was granted and on or about August 8th Estonia became one of the constituent republics of the U. S. S. R.

The steamship Florida, ex-Estonian steamship Signe, was a part of the Estonian merchant fleet included in the nationalization decree of July 28th. The new government ordered the master by wireless to take the ship to Murmansk (Respondent's Exhibit 22, received Record p. 208, printed 333). The new government also provided severe punishment for masters who refused to take their ships to Murmansk and members of their families were to be held responsible for the master's failure to take his ship to Murmansk (Respondent's Exhibit 6, received Record p. 106, printed 305). While the Signe was in New Orleans a libel for possession was filed on December 21, 1940, by Mr. Charles Recht allegedly on behalf of Oskar Tiedemann and some thirty-five Estonian citizens who were the owners

of the ship. On or about the 12th day of June, 1941, an intervening libel was filed by Mr. Charles Recht on behalf of Estonian State Steamship Line, a corporation of the U. S. S. R. organized for the purpose of taking title and possession of the Estonian merchant fleet.

At the time of the invasion and annexation of Estonia the United States State Department denounced this aggression against a small sovereign nation (State Department Bulletin, July 27, 1940, Baltic Republics—Statement by Acting Secretary of State, Mr. Welles) and refused to recognize the Soviet government established in Estonia (Respondent's Exhibit 3, received Record p. 94, printed 298) recognized the representative of the former independent government of Estonia, Hon. Johannes Kaiv, Acting Consul General and Chargé d'Affaires (Respondent's Exhibit 1, received Record p. 91, printed 272). The United States State Department has not altered its position in respect to any of these matters to this date.

The trial in the District Court resulted in dismissal of both the libel and intervening libel. Whereupon the steamship *Signe* was returned to the possession of those in possession at the time the libel was filed and the ship left the jurisdiction of the District Court without the posting of a supersedeas bond by the petitioner herein.

There is no finding of fact by the Court below that the regime set up in Estonia under the aegis of the Russian government was a de facto government, nor is it conceded in any of the pleadings that such regime was a de facto government as stated in note 2 on page 3 of libellant's petition.

The statements in the petition relative to the jurisdiction of this Court will not be answered by way of further factual statement as each of the contentions are made a point in petitioner's accompanying brief. The points made in petitioner's brief will be answered seriatim as designated by the petitioner.

POINT I

(p. 11, Petitioner's Brief)

The decision below is not in conflict with that of the Circuit Court of Appeals of the Third Circuit in *The Denny*, 127 Fed. (2nd) 404. The part of that opinion quoted on page 12 of petitioner's brief is strictly obiter dictum. The real basis of that decision is to be found on page 409 of the report, where, after reviewing the testimony on the question of duress, the Court said:

"The competency of the evidence is extremely questionable and in our opinion falls far short of justifying the fact finding that the powers of attorney were given under duress."

The Court accordingly held that the powers of attorney to Mr. Recht were not invalid on that ground.

POINT II

(p. 13, Petitioner's Brief)

The decision of the Court below does not depart from any course of judicial proceeding in the United States Courts. The case of *U. S. v. Belmont*, 301 U. S. 324, cited on page 13 of petitioner's brief, was a decision after recognition of Russia by the United States government. The same can be said of *U. S. v. Pink*, 315 U. S. 203, cited and quoted on page 14 of petitioner's brief. In the present case we are dealing with the government of Estonia, established in that country after the invasion by the Russian army and which government was subservient to the government of the U. S. S. R. This government thus established has not been recognized by the United States.

POINT III

(p. 14, Petitioner's Brief)

All of the decisions cited in petitioner's brief under this point without exception were made in cases involving property within the territorial and physical jurisdiction of the de facto government. The property involved in the case at bar was never in the geographical and physical jurisdiction either of the unrecognized Estonian government or of that of the government of the U. S. S. R. It is, therefore, to no purpose to refer individually to the long list of cases cited on pages 15 and 16 of petitioner's brief. Since, however, the case of *Salimoff v. Standard Oil*, 262 N. Y. 220, was singled out as deserving of special mention and citation, respondent points out that this case involved title to certain oil purchased in Russia and delivered in Russia to Standard Oil Company. It involved the acts of an unrecognized government only within its own territorial jurisdiction; whereas, the steamship *Florida*, ex-Signe, was never within the territorial jurisdiction of the unrecognized government involved. The *Salimoff* case has no application to the case at bar.

The case of *U. S. v. Pink*, also cited and quoted from on page 17 of petitioner's brief, is a case arising after de jure recognition of the Russian government.

POINT IV

(p. 18, Petitioner's Brief)

There is no merit in this point for three reasons:

1st: That the testimony sought to be adduced by the deposition was to be given in Moscow where the witness would have been subject to the duress of the aggressor nation. Testimony so given is not admissible.

2nd: The treaty between the United States and Estonia provides for the manner of taking testimony by deposition for use in American Courts. To have compelled the taking of the testimony of the witness Tiedemann would have been a contravention of that treaty.

3rd: The method of taking depositions in Russia is governed by the Bullitt-Litvinoff Exchange of Notes (November 22, 1935), which provided among other things that depositions must be forwarded by the State Department. The State Department could not and would not have forwarded this deposition to Russia because the State Department refused to recognize the annexation of Estonia by Russia. Furthermore, the application for letters rogatory was not made in good faith as the claimant and respondent below consented to the taking of the testimony of O. Tiedemann provided testimony were taken in Finland or Sweden or other neutral country where he would not be subject to intimidation or duress of the aggressor nation, without expense to the libellant, and claimant offered to bring the said witness to the United States to testify in open court at claimant's expense, but both these propositions were refused by the libellant; no doubt advisedly so, because the witness could then testify freely and without restraint.

POINT V

(p. 19, Petitioner's Brief)

The case of the *Bello Corrunes*, 6 Wheat. 152, 1821, does not sustain this point. The part from the opinion of that case quoted on page 20 is obiter dictum as that case involved only the right to appear and not the right to receive property. However, the Consul General in the case at bar is within the *dictum* of that case as he has the "specific powers" mentioned, under the Estonian law, particularly the principle of law in effect in that country known as *negotiorum gestor*, which being a principle of the civil law is a part of the law of Louisiana.

In *Vujic v. Youngstown Sheet & Tube Company*, 220 Fed. 390, D. C., N. D. Ohio, 1914, the question was whether the Consul General of Austria-Hungary was the proper person to receive payments under the Compensation Law of Ohio on behalf of his nationals without special authorization or power of attorney from them. The Court reviewed the provisions of the laws of Austria-Hungary, particularly those relating to the duties of Consuls, and found that under the law Consuls were empowered to receive such payment without special authorization.

POINT VI

(p. 20, Petitioner's Brief)

Under this point petitioner's counsel assumes that the Baltic States, particularly Estonia, will hereafter remain a member of the U. S. S. R. and that the United States government will recognize the aggression perpetrated by Russia on Estonia in 1940, and cites the Soviet organ *Pravda* to that effect. However, if one is to speculate on the future status of the Baltic States the denunciation of the Russian aggression on the Baltic States by Acting Secretary of State Mr. Welles, published in the State Department Bulletin, July 27, 1940, the Atlantic Charter, particularly the second and third paragraphs thereof, the fact that the budget of the United States government for the fiscal year ending June 30, 1944, makes provision for the payment of Ministers' salaries to the three Baltic States, and the declaration of the United Nations to which Russia is a party, published in the Department of State Bulletin for January 8, 1943 (p. 21), furnish a more solid foundation for speculation to the opposite.

The cases cited on pages 22 and 23 of petitioner's brief are cases on the equity side of the Court. This is a case in the admiralty and the admiralty has no equitable jurisdiction. The cases, therefore, are not in point.

POINT VII

(p. 24, Petitioner's Brief)

It is submitted that the documentary evidence by way of decrees of the unrecognized government of Estonia, together with the other testimony adduced at the trial, fully sustains the finding of the Court that the libellant Tiedemann signed his power of attorney to Mr. Recht under duress. This point assumes that the basis of this finding is entirely in the oral testimony at the trial, whereas the decrees as published in the Official Gazette of the new government were placed in evidence and furnish full and adequate proof of duress.

POINT VIII

(p. 25, Petitioner's Brief)

The only title asserted by the intervening libellant, Estonian State Steamship Line, was the nationalization decrees and the decree of the U. S. S. R. authorizing the formation of the intervening libellant corporation for the purpose of taking title to nationalized ships. Since the decrees of an unrecognized government cannot affect property outside the territorial jurisdiction of the government, the lower Court rightly held that there was no proof of ownership in the libellants.

POINT IX

(p. 25, Petitioner's Brief)

It is respectfully submitted that the State Department rather than this or any other Federal Court is the final authority on the effect of events relative to the status of

foreign States and that until the State Department has spoken otherwise this Court is powerless to act and by denying the petition leaves the property involved where the lower Court found it.

CONCLUSION

The petition for certiorari should be denied.

Dated, New York, N. Y., June 9, 1943.

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